UNIVERSITY OF PENNSYLVANIA
LAW REVIEW
AND AMERICAN LAW REGISTER

FOUNDED 1852

Published October to June by the Law School of the University of Pennsylvania, 34th and Chestnut Streets, Philadelphia, Pa.

SUBSCRIPTION PRICE, $3.00 PER ANNUM; SINGLE COPIES, 35 CENTS

NOTES.

BANKS AND BANKING—COLLECTION OF DRAFT—WHEN TITLE PASSES.—A corporation deposited with an Indianapolis bank, a draft on a Baltimore company. As between the depositor and the bank, it was customary for the latter to enter each draft to the company's credit as cash, the proceeds to be subject to check as soon as entered on the company's pass-book. Having so entered the draft in suit, the bank sent it to a Baltimore bank for collection. The drawee paid it, but later in the same day sought to hold the Baltimore bank as garnishee on a foreign attachment taken out against the original depositor of the draft. The Baltimore bank pleaded *nulla bona*, and judgment was rendered in its favor, the court holding that title to the draft had passed to the Indianapolis bank at the time of deposit.[1]

As pointed out by the court, there are two previous Maryland decisions on much the same question, in both of which it is said, though by way of dictum, that, under similar circumstances, title passes from the depositor to the bank, when the indorsement is in

[1] Auto and Accessories Mfg. Co. v. Merchants' National Bank, 81 Atl. Rep. 294 Md. (1911).

blank or to the bank itself.[2] In the present case there was a general indorsement to the bank, and this fact, coupled with the additional facts that the amount of the draft was immediately credited to the depositing company as cash, and could be drawn upon at once, were considered as controlling the situation, there being no evidence to show that the parties looked upon the transaction in a different light. There was also the positive testimony of the cashier of the Indianapolis bank to the effect that the bank treated such drafts of the depositor as discounts, though he did not state that they were actually discounted. But although this was the practice of the bank, there was no agreement with the company that it should be done.

The decision of a question such as is raised in the principal case depends largely on the presence or absence of certain facts, which may, by themselves, seem unimportant, but are, when taken together, the turning points of the decisions. A specific agreement between the bank and the depositor that the proceeds of the latter's drafts shall be credited to him at once as cash—the discount being deducted—is recognized as constituting a sale of the paper to the bank. On the other hand, if there was no such agreement, and the depositor indorsed the paper "for collection and credit to" himself, the courts consider such a transaction as a bailment or trust, and hold that title to the draft does not pass to the bank upon its deposit.[3] But there are cases which lie between the two classes just noticed; and it is with these that the courts have some difficulty. Where a depositor sends a check or draft to his bank marked "for deposit to the credit of" himself, and the amount is credited to him as cash, he having the right to draw against such deposit, it has been considered that title to the draft passed absolutely to the bank, though there was no specific agreement between the parties on the matter.[4] The court in the Minnesota case just referred to, citing a prior case in that State, said: "Upon a deposit being made by a customer in a bank, in the ordinary course of business, of money, checks, drafts, or other negotiable paper received and credited as money, the title of the money, drafts, or other paper immediately becomes the property of the bank, which becomes debtor to the depositor for the amount unless a different understanding affirmatively appears." It will be seen that this covers the present case. However, the contrary view was maintained in the Circuit Court of Appeals for the First Circuit.[5] Again, different weight is to be attached to certain facts, depending upon whether the draft is "sight" or "time" paper. If it is the

[2] Tyson v. Rawls, 77 Md. 412 (1893); Ditch v. Western National Bank of Balto., 79 Md. 192 (1894).

[3] McCleod v. Evans, 66 Wis. 401 (1886); 2 Morse on Banks and Banking, Fourth Edition, sec. 583a.

[4] Security Bank of Minn. v. Northwestern Fuel Co., 58 Minn. 141 (1894); dictum in Craigie v. Hadley, 99 N. Y. 131 (1885), where the general doctrine to this effect is said not to be open to question.

[5] Beal v. City of Somerville, 50 Fed. Rep. 647 (1892).

former, the question of most importance, according to some authorities, is whether the bank can charge back the amount of the draft to the depositor's account, in case, for any reason, it cannot be collected.[6] This is disputed in Maryland[7] and Kansas,[8] where it is said that the right of the bank to charge back is really only a recognition of its rights as indorsee, "and hence is not in any sense inconsistent with ownership." As regards "time" paper, the controlling element seems to be the nature of the entry on the books of the bank. If the full amount of the draft is credited to the depositor, it is held that a sale of the paper has not taken place,[9] but if the proceeds only are credited; *i. e.*, the amount of the draft, less the discount, title has passed to the bank.[10] The mere fact that the depositor may draw on the bank immediately after the deposit of the draft is generally considered not to indicate a transfer of ownership.[11] There seems to be a divergent opinion, however, as to whether the fact that the credit is given as cash has the effect of passing title,[12] there being no element of greater weight—such as an agreement of the parties—to determine the question.

It will thus be seen that the law on this subject is not uniform, although, as has already been said, some of the supposed conflict of authority is due to the fact that in many apparently irreconcilable cases there are seemingly unimportant elements which serve to distinguish and reconcile them. The only general statement which can safely be made as to the whole question is that it is one of fact, depending on the circumstances which exist in each case.

L. C. A.

CARRIERS—DEPOT REGULATIONS—EXCLUSIVE LICENSE TO TUG BOAT COMPANY.—The question of the obligation of a common carrier to afford equal privileges in and about its depots, to persons, not themselves passengers, shippers or consignees, who seek the business of removing the persons or goods carried from the depot, was raised in an interesting way in the recent case of Baker-Whiteley Coal Co. v. B. & O. R. R. Co.[1] The defendant railroad

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[6] Armour Packing Co. v. Davis, 118 N. C. 548 (1896); Zane on Banks and Banking, sec. 133.

[7] Ditch v. Bank, *supra.*

[8] Noble v. Doughten, 72 Kan. 336 (1905). *Accord:* Trust and Savings Bank v. Mfg. Co., 150 Ill. 336 (1894).

[9] Giles v. Perkins, 9 East, 12 (1807).

[10] Carstairs, *et al.*, v. Bates, 3 Campbell, 301 (1812).

[11] Balbach v. Frelinghuysen, 15 Fed. Rep. 675 (1883). 2 Morse on Banks and Banking, Fourth Edition, sec. 583c.

[12] Kavanaugh v. Bank, 59 Mo. App. 540 (1894), and Amer. Ex. Nat'l Bank of Chicago v. Gregg, 37 Ill. App. 425 (1890), hold that in such a case title has passed. *Contra:* Beal v. City of Somerville, *supra.*

[1] 188 Fed. 405 (1911).